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5 Attorneys for Plaintiff GLOBAL TECHNICAL SEARCH, INC.
6 dba GLOBAL SEARCH

7
8 IN THE UNITED STATES DISTRICT COURT
9
10 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

11 GLOBAL TECHNICAL SEARCH, INC. dba
12 GLOBAL SEARCH, a California Corporation,

13 Plaintiff,

14 v.

15 LELAND JACOBSEN, an individual; and
DOES 1 through 25, inclusive,

16 Defendants.
17

Case No. 3:08-cv-00424-BEN-BLM

**DECLARATION OF MICHAEL
BURNETT IN SUPPORT OF
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF GLOBAL TECHNICAL
SEARCH, INC. dba GLOBAL SEARCH'S
APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND MOTION
FOR PRELIMINARY INJUNCTION**

18
19 I, Michael Burnett, declare as follows:

20 1. I am the General Manager of GLOBAL TECHNICAL SEARCH, INC. dba
21 GLOBAL SEARCH ("GLOBAL SEARCH"). Unless stated as relying on information and
22 belief, the facts contained in this declaration are based on personal knowledge, and if called to
23 testify, I could and would do so competently thereto.

24 2. I founded GLOBAL SEARCH approximately 18 years ago. GLOBAL
25 SEARCH is a recruiting firm that specializes in recruiting and placing personnel and
26 executives for environmental, engineering and corporate employer-clients nationwide.

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1 3. GLOBAL SEARCH has invested substantial time and money developing
2 information and knowledge relating to its employer-clients and the business of recruiting and
3 placing candidates.

4 4. This information developed by GLOBAL SEARCH over the past 18 years is
5 confidential and proprietary and contains confidential employer-client and candidate
6 information, including but not limited to, identity of candidates, candidate information,
7 identity of employer-clients, personnel needs of employer-clients, fee agreements, pricing,
8 and other sensitive and confidential information.

9 5. GLOBAL SEARCH organizes, maintains and accesses this confidential and
10 proprietary information in a database it developed using the ACT! software program installed
11 on GLOBAL SEARCH's networked office computers.

12 6. Employees input this confidential and proprietary information into the ACT!
13 program and use the software database to match potential employment candidates to
14 prospective employers in furtherance of GLOBAL SEARCH's recruitment business.

15 7. GLOBAL SEARCH and its employees additionally use these computers to
16 communicate with clients nationwide.

17 8. GLOBAL SEARCH rigorously maintains the confidentiality of its proprietary
18 information because the information provides GLOBAL SEARCH with a competitive
19 advantage in the marketplace from which GLOBAL SEARCH derives economic value.

20 9. Furthermore, GLOBAL SEARCH informs the candidates and its employer-
21 clients that information they provide GLOBAL SEARCH to assist in the placement and/or
22 recruitment of candidates will be kept confidential.

23 10. Employees are required to sign an employment agreement containing a
24 provision regarding GLOBAL SEARCH's confidential and proprietary information.

25 11. LELAND JACOBSEN was an employee with GLOBAL SEARCH from May
26 8, 2006 to January 2, 2008.

27 12. His job title was Independent National Associate. JACOBSEN entered into a
28 written employment agreement with GLOBAL SEARCH on or about May 8, 2006. I signed

1 the employment agreement on behalf of GLOBAL SEARCH. A true and correct copy of this
2 employment agreement, titled Independent National Associate Account Executive
3 Employment Agreement ("Employment Agreement") is lodged herewith as **Exhibit "1."**

4 13. GLOBAL SEARCH specifically included terms in the Employment
5 Agreement regarding its confidential and proprietary information:

6 Section 2(a)(vii) of the Employment Agreement states that the
7 Independent National Associate ("INA"):

8 acknowledges that the duties of an INA are confidential,
9 sensitive and professional in nature, and that they
10 require the Account Executive to function in a
11 discretionary executive capacity with regard to
12 screening candidates and advising candidates and
13 employer-clients, assisting them in negotiations, and
14 otherwise developing and managing the areas of the
15 Company's business for which the INA is assigned
16 responsibility . . .

17 Section 4(f) of the Employment Agreement further states:

18 the term "Company's Proprietary Information" as used
19 in this Agreement means the Company's confidential
20 proprietary information constituting the trade secrets of
21 the Company, including but not limited to information
22 of a technical and business nature pertaining to the
23 Company's personnel placement service business, the
24 identity of candidates, the personal information supplied
25 by candidates, information concerning the identity [sic] of
26 employer-clients and their personnel, the personnel
27 needs and requirements of employer-clients and terms
28 and conditions under which the Company deals with
29 employer-clients, other customer lists, training manuals,
30 training tapes, computer programs, films, video
31 cassettes, records, forms, unique techniques, methods
32 and procedures for the operation of a personnel
33 placement service business or similar types of
34 businesses, its contacts with such companies, its
35 suppliers, etc. . . .

36 Section 5(b)(i) of the Employment Agreement states:

37 that *upon termination of this Agreement, the INA shall*
38 *immediately turn over to the Company the Company's*
39 *Proprietary Information*, including but without limiting
40 the generality of the foregoing, any and all lists,
41 documents, or other types of records and any written,
42 typed or printed materials identifying the candidates of
43 the Company or identifying the employer-clients or
44 personnel of employer-clients together with any and all

1 data involving advertising techniques, candidate
 2 processing, forms, correspondence or data in any way
 3 involving the Company's techniques, training manuals,
 4 training tapes, video cassettes, computer programs,
 5 materials, methods or contacts, *and that the INA shall
 have no right to retain any copies of the foregoing for
 any reason whatsoever after termination of his or her
 employment hereunder* without the express written
 consent of the Company

6 [Emphasis added.]

7 Section 6 of the Employment Agreement states:

- 8 (a) It is understood and agreed that, in the course of
 9 his or her employment hereunder and
 10 through the INA's activities for and on
 11 behalf of the Company, the INA will
 12 receive, deal with and have access to the
 Company's Proprietary Information and
 that the INA holds the Company's
 Proprietary Information in trust and
 confidence for the Company.
- 13 (b) *The INA agrees that he or she shall not, during
 14 the term of this Agreement, or thereafter
 15 in any fashion, form or manner, directly
 16 or indirectly, retain, make copies of,
 17 divulge, disclose or communicate to any
 18 person, in any manner whatsoever, except
 when necessary or required in the normal
 course of the INA employment hereunder
 and for the benefit of the Company or
 with the express written consent of the
 Company:*
- 19 (i) *the Company's Proprietary Information;*
 20 *or*
- 21 (ii) *any information of any kind, nature or
 22 description whatsoever concerning
 23 any matters affecting or relating to
 the Company's personnel
 24 placement service business and the
 Company's personnel placement
 25 service.*

26 [Emphasis added.]

27 14. During his employment with GLOBAL SEARCH, JACOBSEN was
 28 authorized to, and routinely accessed GLOBAL SEARCH's computers and ACT! database

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1 which contained GLOBAL SEARCH's proprietary information for the purpose of performing
2 his duties in recruiting and placing candidates.

3 15. I am informed and believe that on or about January 2, 2008, JACOBSEN came
4 in to work early and stayed later than was normal for him.

5 16. On or about January 3, 2008, Linda Rutherford, a GLOBAL SEARCH
6 employee, informed me that she believed that JACOBSEN intended to download the ACT!
7 database for his own personal use and that JACOBSEN had told her he was planning to start
8 his own search firm.

9 17. On January 3, 2008, I contacted Mark McKinley, a forensic computer
10 consultant, and requested that Mr. McKinley examine and analyze JACOBSEN's computer to
11 determine if JACOBSEN had indeed downloaded GLOBAL SEARCH's confidential and
12 proprietary information.

13 18. Mr. McKinley informed me that there were two insertions of a USB memory
14 stick, which are used to download of information, into JACOBSEN's computer on January 2,
15 2008, one at 7:45 a.m. and one at 7:46 a.m. Mr. McKinley further informed me that the USB
16 memory stick inserted was a Corsair 4 gigabyte Flash Voyager memory stick, with a serial
17 number A900000000245435&0#(53f56307-b6bf-11d0-94f2-00a0c913fb8b.

18 19. GLOBAL SEARCH also routinely retains Ken Dubs, Jr. to design and service
19 GLOBAL SEARCH's website. On January 3, 2008, Mr. Dubs was at GLOBAL SEARCH's
20 offices to set up the internet on various computers, including Mr. JACOBSEN's computer.
21 While Mr. Dubs was at GLOBAL SEARCH's offices, he and I found the packaging for a
22 USB memory stick in the wastebasket at Mr. JACOBSEN's desk. The packaging was for a
23 Corsair 4 gigabyte Flash Voyager memory stick, with a serial number
24 A900000000245435&0#(53f56307-b6bf-11d0-94f2-00a0c913fb8b. The package had been
25 opened and the memory stick removed.

26 20. GLOBAL SEARCH never gave JACOBSEN its consent or authorization to
27 download any of its confidential and proprietary information from its computers for his own
28 personal use.

